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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66810; File No. SR-NYSEArca-2012-30)

April 13, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h)(4) to Make Passive Liquidity Orders in Exchange-Listed Securities Available to All Users, Regardless of Whether a Lead Market Maker is Assigned to the Security

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 3, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h)(4) to make Passive Liquidity Orders (“PL Orders”) in Exchange-listed securities available to all Users, regardless of whether a Lead Market Maker (“LMM”) is assigned to the security. The text of the proposed rule change is available at the Exchange, [www.nyse.com](http://www.nyse.com), and the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h)(4) to make PL Orders in Exchange-listed securities available to all Users, regardless of whether an LMM is assigned to the security.

A PL Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price.<sup>4</sup> In securities where the NYSE Arca Marketplace is the primary listings market and there is an LMM assigned to the security that complies with certain display requirements, a PL Order is currently available only to the LMM for such security. In all other securities traded on the Exchange, whether dually-listed securities or securities traded pursuant to unlisted trading privileges, a PL Order is available to all Users. The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h)(4) to remove the text therein that limits the use of PL Orders in Exchange-listed securities to the assigned LMM, thereby making PL Orders available

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<sup>4</sup> See NYSE Arca Equities Rule 7.31(h)(4).

to all Users, regardless of whether an LMM is assigned to the security.<sup>5</sup>

The PL Order was initially designed to attract liquidity to the Exchange by permitting market participants to express their trading interest more accurately than was possible with other order types available at the time.<sup>6</sup> PL Orders were also designed to offer potential price improvement to incoming marketable orders submitted by any User.<sup>7</sup> The Exchange originally believed that restricting the use of the PL Order in Exchange-listed securities to LMMs was appropriate because LMMs would be subject to certain minimum display requirements in proximity to the Exchange's Best Bid and Offer ("BBO").<sup>8</sup> The Exchange believed that these requirements could enhance depth and liquidity at or near the Exchange's BBO.<sup>9</sup>

After significant experience with the use of PL Orders on the Exchange, both by LMMs and other Users, the Exchange believes that PL Orders in Exchange-listed securities should be available to all Users, regardless of whether an LMM is assigned to the security. In this regard, experience has shown that LMMs in Exchange-listed securities generally do not utilize PL Orders in their assigned securities. In contrast, the Exchange has recently received requests from ETP Holders to permit PL Orders in Exchange-listed securities to be entered by Users other than the LMM assigned to the security.

The proposed rule change would enhance the tools available to Users when entering their trading interest by making PL Orders in Exchange-listed securities available to all Users,

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<sup>5</sup> The Exchange also proposes to remove certain text from NYSE Arca Equities Rule 7.37(a)(1) and (b)(1)(A) that would be rendered obsolete by the proposed amendment to NYSE Arca Equities Rule 7.31(h)(4).

<sup>6</sup> See Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 58462.

including LMMs. The Exchange believes that the proposed rule change would not disadvantage LMMs, which generally do not utilize the PL Order type, but would remain able to do so going forward, albeit without the exclusivity that is currently available. Furthermore, the Exchange believes that the elimination of this exclusivity, and the display requirements related thereto, would not have a detrimental impact on the quality of the Exchange's market, because, as discussed above, LMMs generally do not utilize the PL Order. Instead, the proposed rule change could improve the quality of the Exchange's market by increasing the potential for price improvement on the Exchange in Exchange-listed securities.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date via Trader Update.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change meets these requirements because it would promote just and equitable principles of trade and remove impediments to the mechanism of a free and open market by expanding the universe of Users that could submit PL Orders in Exchange-listed securities. The Exchange further believes that by expanding access to PL Orders in Exchange-listed securities to all Users, the Exchange will further promote just and

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

equitable principles of trade. Conversely, the Exchange believes that the proposed rule change would not disadvantage LMMs, which generally do not utilize the PL Order type, because they would remain able to use PL Orders in Exchange-listed securities. Furthermore, the Exchange believes that the elimination of this exclusivity would further the goals of a free and open market and national market system by increasing the potential for price improvement in Exchange-listed securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-30 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2012-30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NYSEArca-2012-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).